Pro Tem Education

PARTICIPANTS GUIDE

ADMINISTRATIVE OFFICE OF THE COURTS

EDUCATION DIVISION/CENTER FOR JUDICIAL EDUCATION AND RESEARCH

CONTENTS

What Do They Expect?

New Findings Confirm the Precepts of Procedural Fairness

By
Tom R. Tyler

What do people want from the courts? One way to answer this question is to explore the factors that shape the public's satisfaction and dissatisfaction with the court system.

This exploration could involve collecting people's general views on the ways courts handle problems or their reactions to their personal experiences with the courts. In either case, the question is: What leads people to feel confidence in the courts and to be satisfied with the way the courts handle the problems that come before them?

Research conducted in California and throughout the United States provides a clear and consistent answer to this question. People react, more than anything else, to whether or not they believe the courts are using *just procedures* in dealing with the conflicts that come before them. In other words, people are very sensitive to how public officials exercise their legal authority.

The most direct evidence of this sensitivity to procedural justice comes from interviews with people who have been personally involved with the courts.[1] People go to court to deal with a wide variety of disputes and problems. And they can be in court because they have come for help or because they need to respond to a complaint against them by someone else. Irrespective of why they are in court, people's reactions are most strongly shaped by whether they think they have received a fair "day in court," in the sense that their concerns have been addressed through a just process.

The idea that people might be more interested in how their cases are handled than in whether or not they win often strikes people as counter-intuitive and wrong-headed. Yet it is the consistent finding of numerous studies conducted over the last several decades, including a recent study of the California state courts.[2] These studies show that people use ethical criteria to evaluate their experiences, and that they particularly focus on their views about appropriate ways for authorities to act when deciding how to resolve legal problems.

What makes a process fair in the eyes of the members of the public? Four factors dominate evaluations of procedural justice.

1. **Voice.** People want to have an opportunity to state their case to legal authorities. They are interested in having a forum in which they can tell their story; that is, they want to have a voice.

2. **Authorities' neutrality.** People react to evidence that the authorities with whom they are dealing are neutral—that is, make decisions based on consistently applied

legal principles and the facts of the case, not personal opinions and biases. Transparency or openness about how decisions are being made facilitates the belief that decision-making procedures are neutral.

3. Respectful treatment. People are sensitive to whether they are treated with dignity and politeness and whether their rights as citizens are respected.

4. Trust in authorities. People focus on clues about the intentions and character of the legal authorities with whom they are dealing. People react favorably to the judgment that the authorities are benevolent and caring and are sincerely trying to do what is best for individuals. Authorities communicate this type of concern when they listen to people's accounts and explain or justify their actions in ways that show an awareness of and concern about people's needs and issues.

When people are dealing with a particular legal authority, they focus on whether that person seems trustworthy and caring. They try to discern whether that person is concerned about their situation and is sincerely trying to do "what is right" in the situation. Trust, in other words, is a key issue in personal experiences with judges and other court personnel.

If people are not personally involved in a court case but are rating their trust and confidence in the courts generally, they focus more on issues of neutrality—that is, whether they believe judges are honest, make their decisions based on the facts, and consistently apply the principles of law to everyone. In either situation, however, it is process-based evaluations that are central to people's reactions to the courts.

Of course, this concern about the fairness of procedures does not mean that people do not care about the outcomes of their cases. They do. In particular, people care whether their outcomes are fair. However, studies consistently find that procedural judgments are more central to people's willingness to accept the outcomes of court cases than are outcome judgments. And this is true of both cases handled through formal trials and cases handled through less formal processes such as mediation.

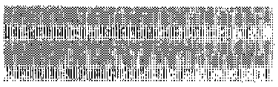
What is striking about procedural justice judgments is that they shape the reactions of those who are on the losing side. If a party who receives an unfavorable outcome feels that the outcome was arrived at in a fair way, he or she is more likely to accept it. And long-term studies show that people continue to adhere to fairly arrived at decisions over time, suggesting that their acceptance of those decisions is genuine and not simply the result of fear or coercion. People who believe they have experienced procedural justice in court rate the court system and court personnel more favorably than people who don't have that belief.

These same procedural justice judgments are a key factor in the public's evaluations of the courts as institutions. The findings of the recent California study of the courts are typical of studies of trust and confidence in the courts, including a national survey of public trust and confidence in state courts, reported on in 2001.[3] The national study also showed that the public's evaluations of state courts are based on evaluations of the fairness of court procedures.

In particular, people were sensitive to the issues of whether the courts protected their rights and whether judges seemed honest. While those interviews also explored whether the courts treated the members of different groups equally and other structural issues, the procedural justice judgments were the most important factor shaping trust and confidence in the courts.

The results of both studies of personal experiences with the courts and studies involving general evaluations of the courts are strikingly consistent, irrespective of the ethnicity or race of the people involved or of their economic or social status. Procedural justice concerns are central to people's reactions to the court, no matter who the people are. Since ethnicity and economic status often shape people's views about what constitutes a fair outcome, it is especially striking that there is a general willingness to defer to fair procedures.

There is also general agreement about what constitutes a fair procedure. The four elements already outlined—voice, authorities' neutrality, respectful treatment, and trust in authorities—generally shape reactions to the courts. Not only using just procedures but explaining them is therefore an ideal way to bridge differences in backgrounds among those who are disputing in court.



These findings have implications for the administration of the courts. In particular, they suggest the value of building public trust and confidence by designing court procedures so that court users have positive experiences. Based on the 2005 California survey, efforts in this state should be concentrated on traffic, family, and juvenile courts, where dissatisfaction is currently high. And they should be directed at all members of the community who deal with the legal system, since the survey indicates that jury duty and serving as a witness also educate people about the legal system.

What type of redesign is needed—aimed at which types of court customers? The specifics will vary depending on the particular context, but here are some ideas.

How to Behave Toward Self-Represented Litigants, Jurors, and Witnesses

- Understanding how things work is strongly associated with satisfaction. Explain in practical terms how the court works, what they should do, and what is going to happen. Ideally, have someone available to answer questions and explain court procedures.
- It would also help to distribute a brochure explaining what people need to do, where they need to go, and when.
- Give people a letter that tells them what their rights are and provides a contact person (with phone number and e-mail address) to whom they can complain if they have problems or concerns. The letter should come from the highest authority in a particular court. Remember that people react to whether they feel treated with politeness, dignity, and respect. This message needs to be made central to education efforts directed at court personnel. People want to have a mechanism through which to complain, even though few will actually use it.
- Acknowledge people's rights and status as citizens. People value knowing their rights and having them acknowledged by the court.

How to Behave Toward Parties

- Give parties an opportunity to explain the concerns that brought them to court. Studies suggest that people are much more willing to accept third-party decisions resolving their disputes if they feel they have had a chance to tell their stories.
- When presenting a decision, explain it by reference to rules and legal principles, demonstrating that the decision is not based on personal prejudice or bias. People are more accepting of a decision if they can understand the principle of law or justice behind it. It is important to show the losing party that the decision was made by applying rules and considering facts.
- Communicate evidence that people's concerns were listened to and taken seriously. If possible, acknowledge valid issues that were raised. People focus primarily upon whether the person in authority considers the needs and perspectives they have expressed, especially when the decision goes against them. Making a decision understandable and making clear that, in the process of deciding, the person's side of the story was heard—even if it was not accepted—communicates respect for the person.

How to Behave Toward the General Public

People respond to statements about the courts issued by court leaders, as long as they think those leaders are sincere and honest. The messages should:

- Acknowledge people's rights to use the courts. Knowing that there are places to go if you have problems is an important part of living in a democracy. Leaders of the courts need to find ways to send this message to the public.
- Emphasize the role of the courts in interpreting and applying the law. Basing decisions on the neutral application of principles to the facts of particular cases is central to the legitimacy of the courts.
- Orient public messages toward the role of the courts in helping people deal with their problems. The courts are a place people can go to for justice. Judges care about the concerns of citizens and listen to their grievances in court. They then apply the law in an effort to solve the problems they face.

Whatever you do, remember the four key procedural justice points: people want an opportunity to tell their stories to an authority who listens; they value being treated with respect; they are more likely to accept decisions when the authority's neutrality and the role of facts are emphasized; and they focus on clues that they can trust the character and sincerity of those in authority. ■

Tom R. Tyler, Ph.D., is a professor of psychology and law at New York University. His research and published works focus on the psychology of procedural justice.

Notes

1. T. R. Tyler and Y. J. Huo, *Trust in the Law* (New York: Russell Sage, 2002).

2. D. B. Rottman, *Public Trust and Confidence in the California Courts* (Administrative Office of the Courts, 2005).

3. T. R. Tyler, "Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want From the Law and Legal Institutions?" (2001) 19 *Behavioral Sciences and the Law* 215–235.

A Review of California Case Law

On Judicial Treatment of Self Represented Litigants in the Courtroom

by John M. Greacen

Overview – the Ethical Context

Judges dealing with self represented litigants in the courtroom are subject to two ethical duties that may, at times, conflict. Canon 3B(7) requires a judge to "accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law." Canon 2A requires the judge to "act at all times in a manner that promotes public confidence in the . . . impartiality of the judiciary."

Many judges perceive that the actions required to ensure a self represented litigant's "right to be heard" violate the court's duty of impartiality and that the duty of impartiality trumps the duty to ensure a litigant's right to be heard. The American Bar Association Standards Relating to Trial Courts, Standard 2.23 finds no inherent conflict between the two ethical duties:

> **Conduct of Cases Where Litigants Appear Without Counsel. When litigants undertake to represent themselves, the court should take whatever measures may be reasonable and necessary to insure a fair trial.**
>
> *Commentary*
>
> The duty of the courts to make their procedures fair is not limited to appointing counsel for eligible persons who request representation. In many instances, persons who cannot afford counsel are ineligible for appointed counsel; in other cases, persons who can afford counsel, or who are eligible to be provided with counsel, refuse to be represented. . . .
>
> All such situations present great difficulties for the court because the court's essential role as an impartial arbiter cannot be performed with the usual confidence that the merits of the case will be fully disclosed through the litigant's presentations. These difficulties are compounded when, as can often be the case, the litigant's capacity even as a lay participant appears limited by gross ignorance, inarticulateness, naivete, or mental disorder. They are especially great when one party is represented by counsel and the other is not, for intervention by the court introduces not only ambiguity and potential conflict in the court's role but also consequent ambiguity in the role of counsel for the party who is represented. Yet it is ultimately the judge's responsibility to see that the merits of a controversy are resolved fairly and justly. Fulfilling that responsibility may require that the court, while remaining neutral in consideration of the merits, assume more than a merely passive role in assuring that the merits are adequately presented.

> The proper scope of the court's responsibility is necessarily an expression of careful exercise of judicial discretion and cannot be fully described by specific formula. . . . . Where litigants represent themselves, the court in the interest of fair determination of the merits should ask such questions and suggest the production of such evidence as may be necessary to supplement or clarify the litigants' presentation of the case. (emphasis supplied)

In early 2006, the American Bar Association took the first steps to clarify this issue in the Model Code of Judicial Conduct itself. The ABA Joint Commission on Evaluation of the Model Code of Judicial Conduct has proposed that Comment 3 to Rule 2.06 (currently Canon 2A on impartiality) be modified as follows:

> *To ensure impartiality and fairness to all parties, a judge must be objective and open-minded, and must not show favoritism to anyone.* ***It is not a violation of this Rule, however, for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.*** *(Proposed new text in* ***bold****)*

While California appellate decisions do not generally pose the issue in the context of the judge's ethical obligations, the general literature on this topic (on which this chapter has drawn heavily) does.[1]

General principles from California caselaw

A self represented litigant in California has the right "to appear and conduct his own case." *Gray v. Justice's Court of Williams Judicial Township, 18 Cal. App.2d 420, 63 P.2d 1160 (3d Dist., 1937)(dictum).*

The court has a general duty to treat a person representing himself in the same manner as a person represented by counsel.

> A lay person, who is not indigent, and who exercised the privilege of trying his own case must expect and receive the same treatment as if represented by an attorney – no different,

---

[1] Cynthia Gray, Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants (American Judicature Society, Des Moines, Iowa 2005); Zorza, "The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications," 17 *Georgetown Journal of Legal Ethics* 423 (2004); Albrecht, Greacen, Hough, Zorza, "Judicial Techniques for Cases Involving Self-Represented Litigants," 41 *Judges' Journal* 16 (ABA winter 2003); Minnesota Proposed Protocol to Be Used by Judicial Officers During Hearings Involving Pro Se Litigants (reprinted in Albrecht, et al, *supra*); *Indiana Advisory Opinion 1-97* (www.in.gov/judiciary/admin/judqual/opinions.html).

> no better, and no worse. *Taylor v. Bell, 21 Cal. App.3d 1002, 1009, 98 Cal.Rptr. 855 (2d Dist., Div. 5, 1971).*[2]

This principle's application is straightforward as it applies to the basic substantive legal principles governing the right to legal relief. The elements required to obtain a judgment and the burden of proof are the same for a self represented litigant as for a litigant represented by counsel. All persons are equal in the eyes of the law.

California case law also applies the "same treatment" principle to the rules of evidence and procedure:

> A litigant has a right to act as his own attorney . . . but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise ignorance is unjustly rewarded. *Doran v. Dreyer, 143 Cal.App.2d 289, 290, 299 P.2d 6611 (1956).*

This rule's application is also straightforward – in part. Inadmissible evidence cannot serve as the basis for awarding relief to a self represented litigant, and a self represented litigant must follow the requirements of the rules of procedure. However, there are three[3] related, countervailing principles that California trial judges must also take into account.

The first is the judiciary's preference to resolve matters on their merits rather than by procedural default.

> It has always been the policy of the courts in California to resolve a dispute on the merits of the case rather than allowing a dismissal on technicality. *Harding v. Collazo, 177 Cal.App.3d 1044,1061, 223 Cal.Rptr. 329 (1986)(Acting P.J. Liu, dissenting).*

---

[2] This language was taken originally from a 1932 Arizona Supreme Court decision, *Ackerman v. Southern Arizona Bank & Trust Co., 39 Ariz. 484, 7 P.2d 944.* Only one subsequent case, *Monastero v. Los Angeles Transit Company, 131 Cal.App.2d 156, 280 P.2d 187 (2d Dist., Div. 3, 1955)* discusses whether a self represented litigant had the means to retain counsel. It is fair to say, therefore, that the principle is not limited to self represented litigants with means but rather applies to all self represented litigants – indigent as well as wealthy.

[3] The Supreme Court, in *Rappleyea v. Campbell,* 8 Cal.4th 975, 884 P.2d 126, 35 Cal.Rptr.2d 669 (1994), greatly curtailed the existence of a third exception established in *Pete v. Henderson, 124 Cal.App.2d 487, 491, 269 P.2d 78 (1st Dist. Div. 1, 1954,* that when trial judges have discretion in applying procedural rules, the court is required to take into account a litigant's self represented status in exercising that discretion. In *Rappleyea,* Justice Mosk, writing for the majority, stated that this rule "should very rarely, if ever, be followed." "We make clear that mere self-representation is not a ground for exceptionally lenient treatment." *Supra, at 985.*

This principle requires the judge not to allow procedural irregularities to serve as the basis for precluding a self represented litigant from presenting relevant evidence or presenting a potentially valid defense.

The second is the trial judge's duty to avoid a miscarriage of justice.

> The trial judge has a "duty to see that a miscarriage of justice does not occur through inadvertence." *Lombardi v. Citizens Nat. Trust etc. Bank, 137 Cal App.2d 206, 209, 289 P.2d 8231 (1951).*

This principle reinforces the preference for a decision on the merits.

The third is that treatment equal to that of a represented party requires the court to "make sure that verbal instructions given in court and written notices are clear and understandable by a layperson." *Gamet v. Blanchard, 91 Cal. App.4th 1276, 1284, 111 Cal. Rptr.2d 439, 445 (4th Dist., Div. 3, 2001).* The court explained this requirement in the following paragraph of its opinion:

> There is no reason that a judge cannot take affirmative steps – for example, spending a few minutes editing a letter or minute order from the court – to make sure any communication from the court is clear and understandable, and does not require translation into normal-speak. Judges are charged with ascertaining the truth, not just playing the referee. [citation omitted] A lawsuit is not a game, where the party with the cleverest lawyer prevails regardless of the merits. [citation omitted] Judges should recognize that a pro per litigant may be prone to misunderstanding court requirements or orders – that happens enough with lawyers – and take at least some care to assure their orders are plain and understandable. Unfortunately, the careless use of jargon may have the effect, as in the case before us, of misleading a pro per litigant. The ultimate result is not only a miscarriage of justice, but the undermining of confidence in the judicial system. *Id., at 1285, 445-446.*

California case law also makes clear that the "same treatment" principle does not prevent trial judges from providing assistance to self represented litigants to enable them to comply with the rules of evidence and procedure.

In *Monastero v. Los Angeles Transit Company, 131 Cal.App.2d 156, 280 P.2d 187 (2d Dist., Div. 3, 1955)* the trial judge "labored long and patiently to convince plaintiff of the folly of conducting a jury case in person, she being untrained in the law. He offered to arrange a continuance in order to enable her to get an attorney for the trial but she was insistent upon her right to represent herself." At the close of the testimony (during which plaintiff thoroughly discredited her own case), the judge ordered opposing counsel to "hand to Miss Monastero instructions that ordinarily would be requested in conjunction with matters of this kind." According to the Court of Appeals, the judge "continued through the trial to assist plaintiff in the presentation of her case, guiding her as to peremptory challenges, assisting her in examining jurors as to cause for challenge, advising her of the right to examine [the defendant], advising efforts to compromise, emphasizing the duty of defendant to exercise the highest degree of care and carefully scrutinizing all proffered instructions." On appeal from the court's judgment rendered on the basis of the jury's verdict in favor of the defendant, plaintiff (at this point represented by counsel) contested the propriety of the court's requiring defendant's attorney to assist plaintiff in the preparation of instructions.

The Court of Appeals, held that plaintiff was in no way prejudiced by the manner in which the instructions were prepared, the appellate court noting that the trial judge prepared and gave two additional instructions on his own motion, both of which were intended to clarify the rights of the plaintiff. The Court of Appeals did not find fault with the extensive assistance provided the plaintiff by the court. Rather, its opinion refers to those efforts with approval, referring to the plaintiff's arguments on appeal that the court had erred in requiring defendant's counsel to assist the plaintiff as "startling."

California appellate courts often recite the "same treatment" principle in affirming a trial judge's discretionary decisions not to provide specific assistance. However, the courts in the same opinions recite, with apparent approval, the steps the trial judge <u>did take</u> to accommodate the special needs of the self represented litigant – treating him or her differently than the court would have, or did, treat a party represented by counsel.

Here are illustrative cases:

In *Lombardi v. Citizens National Trust and Savings Bank of Los Angeles, 137 Cal.App.2d 206, 289 P.2d 823 (2d Dist. Div. 2, 1955),* a self represented plaintiff attempted to present evidence of a claim

against the estate of a deceased. Counsel for the estate objected to the proferred testimony on the grounds of California's "dead man's statute." Counsel also objected to the introduction of a report from a writing expert on the grounds of lack of foundation and hearsay. A nonsuit on the ground of failure of proof was entered. On appeal, the plaintiff argued that the trial judge erred in failing to lend him any assistance in the presentation of his evidence. The Court of Appeals noted the "customary practice" of offering "appropriate suggestions" in cases involving self represented litigants, but held that plaintiff in this case was asking the court to act as counsel for the litigant. Noting that claims against an estate are not easily proved where the "dead man's statute" is involved, the Court of Appeals wrote:

> This case presented difficulty of proof for issues were made not only as to the genuineness of decedent's signature to the document in question and manner in which it was procured but also as to the circumstances under which it was delivered to plaintiff by her, if in fact any delivery was ever made. To explain section 1880, subdivision 3, Code of Civil Procedure, and the decisions construing it to a layman so that he could understand and apply them in the presentation of evidence in a suit on a transaction had with a deceased person, is to forget the difficulty that even some members of the legal profession have in properly presenting competent evidence to prove claims against estates in these circumstances. Such an undertaking would undoubtedly prove abortive and a waste of time. Also, it might well take from the proceeding the appearance of objectivity and impartiality which are so important to public confidence in the administration of justice. <u>This is not a case where a few suggestions on the part of the trial judge would have solved plaintiff's difficulty. Had it been such, the trial judge would undoubtedly have followed the customary practice and offered appropriate suggestions.</u> (Emphasis added)

In *Taylor v. Bell, supra,* a self represented defendant asserted an affirmative defense in an action to recover on five promissory notes. The court called the defendant as its witness and questioned her, followed by cross examination by the plaintiff's attorney. The defendant then called her mother and returned to the stand to testify further on her own behalf. The court then "being of the opinion that defendant should be given full opportunity to produce all available witnesses and evidence she could muster," informed her of her right to subpoena witnesses and inquired how much time she would need. The defendant asked for three weeks and the court adjourned the trial for

that length of time. When the trial resumed, the defendant called and put on seventeen witnesses. She then called an eighteenth witness; plaintiff's counsel informed the court that the witness was out of state on business. After the court "very carefully and meticulously" sought information on the substance and materiality of the witness's purported testimony, the court denied a further continuance on the ground that the requested testimony would not be relevant. After the case was submitted, the judge reconsidered and notified the parties that the submission was vacated and the case set for further hearing to enable the defendant to produce the missing witness. On the date of the further hearing, the court announced that the matter would be continued again and one of the additional witnesses present announced that he would not be available on the new hearing date. The defendant then inquired, "Does that give me the privilege of taking a deposition?" The judge replied, "You will have to ask a lawyer, ma'am." The case was reconvened on the new date, the missing witness and two other witnesses testified, and the case was resubmitted.

The defendant appealed on the grounds that the court erred in continuing the trial *sua sponte*, and in refusing to advise whether she could take the deposition of a witness who would be unavailable to appear. The Court of Appeals, quoting the "same treatment" standard, held that the court had not erred in vacating the submission and continuing the hearing. It further stated that the judge "is not required to act as counsel for [a self represented] party in the presentation of evidence." In the course of affirming the ruling against the defendant, the court's opinion complimented the trial judge on the accommodations the court gave to the defendant. Though the appellate court held that the court did not have the duty to advise the defendant on conducting a deposition, it did not criticize the judge for advising the defendant on the right to issue subpoenas.

In *Nelson v. Gaunt, 125 Cal.App.3d 623, 178 Cal.Rptr. 167 (1st Dist., Div. 2, 1981)*, a self represented defendant complained on appeal that plaintiff's counsel was guilty of misconduct in referring to the defendant as a "monster" and a "lying animal." He claimed that the trial judge had a duty *sua sponte* to prevent the potentially prejudicial misconduct of opposing counsel, thereby excusing him of his failure to preserve the error by objecting. The Court of Appeals recited the many ways in which the trial judge assisted the defendant:

> [T]he court asked and received the cooperation of [plaintiff's] counsel. The court, [defendant and plaintiff's] counsel met each

> day prior to the seating of the jury to discuss anticipated testimony and evidence, and any objections that might be appropriate. On several occasions, the court, in the presence of the jury, reiterated the proper procedure for admission of evidence, and suggested that if [defendant] wished to raise an objection he might do so. On the court's initiative, several admonitions were given to the jury to disregard statements made by witnesses.

The Court of Appeals held that it was not error for the court to have failed to prevent opposing counsel from committing prejudicial misconduct and that the defendant could not raise that claim for the first time on appeal.

In *Foster v. Civil Service Commission of Los Angeles County, 142 Cal.Ap2d 444, 190 Cal.Rptr. 893 (2d Dist, 1983)*, the Court of Appeals cited the "same treatment" rule in an appeal from the Superior Court in which the appellant, proceeding *in propria persona*, failed to provide citations to the trial court record. However, the appellate court then disregarded the rule and examined the entire record for support for the arguments made – treatment that would not have been accorded a party represented by counsel.

In *Harding v. Collazo, 177 Cal.App.3d 1044, 223 Cal.Rptr. 329 (2d District, Div. 3, 1986),* a self represented litigant filed a complaint on July 7, 1983, for a variety of wrongs done to him during his employment by the defendants. On April 13, 1984, the court, on motion of the defendants, held that the complaint failed to state facts sufficient to constitute a cause of action, allowing the plaintiff 30 days to amend. On May 10, 1984, within the 30 days, the plaintiff filed a new complaint, adding two additional defendants. On June 4, the defendants filed a demurrer to the amended complaint. On June 27, 1985, the parties by oral stipulation agreed that plaintiff would file a further amended complaint by August 20th. Plaintiff missed this deadline. The defendants agreed to extend the time for filing to September 10th. On September 18th, the defendants moved to dismiss the first amended complaint. The motion was to be heard on October 26th. On October 19th, an attorney filed an appearance for the plaintiff; he filed an amended complaint on October 22nd. At the October 26th hearing, the trial court dismissed the case with prejudice. On appeal, the Court of Appeals, with one member of the panel dissenting, upheld the judge's exercise of his discretion to enforce the oral stipulation among the parties. However, the court did not criticize the judge for giving the self represented litigant two opportunities

(three if you count the original submission) to submit a legally sufficient complaint.

Allowable assistance to self represented litigants

Listed below are actions of trial judges assisting self represented litigants upheld on appeal and additional actions recited in appellate opinions with apparent approval.

Liberally construing documents filed

California courts generally follow the practice of construing filings in the manner most favorable to self represented litigants and to overlook technical mistakes they may make in pleading.

In *Nelson v. Gaunt, supra,* the Court of Appeals noted that the appellant erroneously stated that he appealed from the verdict and notice of entry of judgment. The court construed the appeal from the notice of entry of judgment as taken from the judgment and dismissed the purported appeal from the verdict.[4]

In *Rappleyea v. Campbell, 8 Cal.4th 975, 884 P.2d 126, 35 Cal.Rptr.2d 669 (1994),* the Supreme Court ruled that the trial court erred in refusing to vacate a default judgment when shown that the clerk of court had given self represented defendants who lived out of state erroneous information concerning the required filing fee, leading to rejection of a timely filed answer. The defendants had filed a motion for relief from default before the default judgment was entered.

In *Gamet v. Blanchard, 91 Cal. App.4th 1276, 1284, 111 Cal. Rptr.2d 439, 445 (4th Dist., Div. 3, 2001),* the Court of Appeals reversed the trial court's refusal to vacate its dismissal of the complaint, finding that the court abused its discretion in not providing the self represented litigant – whose attorney had withdrawn from the case, who lived in South Dakota, and who was permanently disabled from an accident that shattered a disc in her neck – a further opportunity to prosecute her case despite her procedural defaults, which appeared to arise from her misunderstanding of court correspondence and court procedures.

In *Baske v. Burke, 125 Cal.App.3d 38, 177 Cal.Rptr. 794 (4th Dist., Div.1, 1981),* the self represented defendant sent several hand-written letters to the clerk of the superior court. Though the letters contained

[4] Nelson v. Gaunt, supra, at 629, n1.

statements sufficient to constitute an answer to the complaint, the clerk of court merely placed them in the court record without bringing them to the attention of the judge. Even though her motion to set aside the default judgment was filed over six months after entry of the judgment, the trial court granted the motion to set aside. The Court of Appeals affirmed that decision, ruling that the failure of the clerk constituted extrinsic mistake providing a ground for the trial court to vacate the judgment.

Allowing liberal opportunity to amend

In *Harding v. Collazo, supra,* the Court of Appeals noted with apparent approval giving a self represented litigants multiple opportunities to amend his complaint to state facts sufficient to constitute a valid claim for relief.

Assisting the parties to settle the case

In *Monastero v. Los Angeles Transit Company, supra,* the Court of Appeals noted with apparent approval the trial court's advising the parties on efforts to compromise the case.

Granting a continuance sua sponte on behalf of the self represented litigant

In *Monastero v. Los Angeles Transit Company, supra,* the Court of Appeals noted with apparent approval the trial court's granting a continuance to allow the self represented litigant an opportunity to obtain counsel. In *Taylor v. Bell, supra,* the Court of Appeals affirmed the trial court's sua sponte vacating the submission of a case following trial and setting the matter for further hearing to allow the self represented litigant to call a witness.

Explaining how to subpoena witnesses

In *Taylor v. Bell, supra,* the Court of Appeals noted with apparent approval the trial court's advising the self represented litigant of her right to subpoena witnesses.

Explaining how to question jurors and exercise peremptory challenges and challenges for cause

In *Monastero v. Los Angeles Transit Company, supra,* the Court of Appeals noted with apparent approval the trial court's instructing the

self represented litigant concerning the use of peremptory challenges and the examination of potential jurors to identify cause for challenges.

Explaining the legal elements required to obtain relief

In *Pete v. Henderson, supra note 3,* in a portion of its opinion not disapproved by the Supreme Court, noted that "one of the chief objects subserved by a motion for nonsuit is to point out the oversights and defects in plaintiff's proofs, so he can supply if possible the specified deficiencies." *124 Cal.App.2d 487, at 491.*

Explaining how to introduce evidence

In *Lombardi v. Citizens National Trust and Savings Bank of Los Angeles, supra,* the Court of Appeals expressed approval of the "customary practice" of the trial judge's making suggestions to assist a self represented litigant in the introduction of evidence. In *Nelson v. Gaunt, supra,* the Court of Appeals noted with apparent approval the trial judge's explaining the proper procedure for admission of evidence, in the presence of the jury. The trial judge in that case also met with the self represented litigant and opposing counsel each day prior to the seating of the jury to discuss anticipated testimony and evidence, and any objections that might be appropriate.

Explaining how to object to the introduction of evidence

In *Nelson v. Gaunt, supra,* the Court of Appeals noted with apparent approval the trial judge's explaining the proper procedure for objecting to opposing counsel's introduction of evidence.

Explaining the right to cross examine witnesses presented by the opposing party

In *Monastero v. Los Angeles Transit Company, supra,* the Court of Appeals noted with apparent approval the trial court's advising the self represented litigant concerning her right to question opposing witnesses.

Calling witnesses and asking questions of them

In *Taylor v. Bell, supra,* the Court of Appeals noted with apparent approval the trial judge's calling the self represented litigant as a witness and posing questions to her.

Sua sponte admonishing the jury on behalf of a self represented litigant to disregard statements of witnesses

In *Nelson v. Gaunt, supra,* the Court of Appeals noted with apparent approval the trial judge's sua sponte admonitions to the jury.

Preparing jury instructions for a self represented litigant or requiring opposing counsel to do so.

In *Monastero v. Los Angeles Transit Company, supra,* the Court of Appeals noted with apparent approval the trial court's preparation of instructions for the self represented litigant. It explicitly affirmed the trial court's requiring opposing counsel to provide the litigant with the jury instructions that would usually be submitted by the plaintiff.

Limitations on the trial judge's actions in accommodating the needs of self represented litigants

A judge "is not required to act as counsel" for a party conducting an action in propria persona, *Taylor v. Bell, 21 Cal. App.3d 1002, 1009, 98 Cal.Rptr. 855 (1971),* and is not allowed to do so, *Inquiry Concerning Judge D. Ronald Hyde, No. 166, Commission on Judicial Performance.*

One of the counts in the Commission's removal of Judge Hyde from office recounted an incident in which the judge became the advocate for a party. The judge observed a defendant in court for arraignment on a misdemeanor domestic violence case gesturing to his wife, who was sitting in the audience, that he was going to slit her throat. The judge ordered the man removed from the courtroom. On the date of his next court appearance, the judge spoke with the wife, who told him that she was filing for dissolution of the marriage and wanted to serve her husband that day. The judge went with the wife to the clerk's office, assisted her in filling out a fee waiver petition, went to the office of the Commissioner responsible for reviewing such petitions and ensured that it got immediate attention, carried the signed fee waiver petition to the clerk's office where the dissolution petition was filed and a summons issued, and took the summons and petition to his own deputy who served them on the husband before he was transported back to the jail. The Commission concluded that the judge's behavior had "embroiled" him in the matter, evidenced a lack of impartiality, and constituted prejudicial misconduct.

The Supreme Court and the Commission on Judicial Performance have, on numerous occasions, disciplined judges or removed them from office for their denial of the rights of unrepresented litigants appearing before them.

In *Kennick v. Commission on Judicial Performance, 50 Cal.3d 297, 787 P.2d 591, 267 Cal. Rptr. 293 (1990)* the Supreme Court removed a judge from office for, among other things, rudeness to pro per litigants in criminal cases.

In *McCartney v. Commission on Judicial Qualifications, 12 Cal.3d 512, 526 P.2d 268, 116 Cal. Rptr. 260 (1974)*, the Court censured a judge for, among other things, bullying and badgering pro per criminal defendants.

In *Inquiry Concerning Judge Fred L. Heene, Jr., No. 153 (Commission on Judicial Performance 1999)*, the Commission censured a judge for, among other things, not allowing an unrepresented defendant in a traffic case to cross-examine the police officer and failing, in a number of cases, to respect the rights of unrepresented litigants.

In *Inquiry Concerning a Judge, No. 133 (Commission on Judicial Performance 1996)*, the Commission censured a judge for, among other things, pressuring self represented litigants to plead guilty, penalizing a self represented litigant who exercised his right to trial, and conducting a demeaning examination of an unrepresented litigant.

A trial judge may not deny the parties their procedural due process rights by pre-empting their ability to present their case. In *Inquiry Concerning Judge Howard R. Boardman, No. 145 (Commission on Judicial Performance 1999),* the Commission concluded that Judge Boardman committed willful misconduct by depriving the parties of their procedural rights in *King v. Wood.* The case involved a quiet title action concerning a home filed by a self represented litigant. The opposing party was represented by counsel, who was trying his first case. Judge Boardman called the case for trial and, telling the parties that he was proceeding "off the record" and without swearing the parties, asked them to tell him what the case was about. The self represented litigant spoke, followed by the lawyer's opening statement and his client's statement. The judge alternated asking the parties questions. He reviewed documents presented to him. After asking if either party had anything else to add, he announced that he was taking the case under submission and asked the attorney to prepare a statement of decision and judgment, which the judge later signed.

The Commission concluded that Judge Boardman, on his own initiative and without notice to or consent by the parties, followed an "alternative order" in a "misplaced effort to conserve judicial resources." It noted that the parties were denied their rights to present and cross examine witnesses and to present evidence.

Limitations on a trial judge's refusal to accommodate the needs of a self represented litigant

The federal courts and some state courts recognize affirmative duties on the part of trial judges to accommodate the needs of self represented litigants, such as a duty to inform a litigant how to respond to a motion for summary judgment. *Hudson v. Hardy, 412 F.2d 1091 (D.C Circuit 1968); Breck v. Ulmer, 745 P.2d 66 (Alaska 1987).*[5] California's appellate courts have not, to date, articulated any such affirmative duties. They have considered all such actions to fall within the discretion of the trial judge and have consistently affirmed a trial judge's refusal to exercise such discretion to provide assistance to a self represented litigant in the courtroom. The Court of Appeals has upheld a trial judge's refusing to advise a self represented litigant how to introduce evidence in the face of the "dead man's statute," *Lombardi v. Citizens National Trust and Savings Bank of Los Angeles, supra,* refusing to advise whether the litigant had a right to depose a witness, *Taylor v. Bell, supra,* failing to prevent opposing counsel from committing prejudicial misconduct in his arguments to the jury, *Nelson v. Gaunt, supra,* and failing to grant a third opportunity to amend a complaint, *Harding v. Collazo, supra.*

A self represented litigant will not be allowed to contest the propriety of a judicial accommodation that s/he requested

In a criminal case, *People v. Morgan, 140 Cal.App.2d 796, 296 P.2d 75 (2d Dist, Div. 2, 1956),* the court ruled that only the judgment and stay of execution from the court file related to a prior conviction would

[5] The U.S. Supreme Court has decided two recent cases raising the issue of a federal trial judge's affirmative duty to provide information to a self represented litigant, imposing such a duty in *Castro v. United States, 124 S.Ct.786 (2003)* and refusing to impose a duty in *Pliler v. Ford, 124 S.Ct. 2441 (2004).* In *Castro* the Court held that a federal district judge must inform a prison inmate when the judge proposes to recharacterize a Fed. R. Crim. P. 33 motion (which is not cognizable) as a motion under 28 USC Section 2255 (which is cognizable, but would cause any future Section 2255 motion to be subject to the restrictions on "second or subsequent" such motions) and give the litigant the opportunity to withdraw or amend the motion. In *Pliler* the Court held that a federal district judge does not have a duty to inform a habeas corpus petitioner of all the options available to him before dismissing a petition that included both exhausted and unexhausted claims (claims in which the petitioner had and had not exhausted all available state court remedies).

be admitted into evidence. The defendant then moved to introduce the entire file into evidence. The judge advised him that "there are matters in that file that are very detrimental to you." The defendant nonetheless insisted that the entire file be introduced into evidence. The court did so. On appeal, the defendant claimed that admission of the entire file was reversible error. The Court of Appeals quoted *People v. Clark*:[6]

> 'But by electing to appear *in propria persona* a defendant cannot secure material advantages denied to other litigants. Certainly one appearing *in propria persona* cannot consent at the trial to the introduction of evidence, after first introducing the subject matter himself, and thus invite the introduction of evidence to rebut the inference he was trying to create, and then be permitted on appeal to complain that his invitation was accepted.'

Note that the Court of Appeals did not criticize the judge's advice to the defendant that the file contained information detrimental to his case.

[6] 122 Cal.App.2d 342, 349, 265 P.2d 43 (?).

PERSPECTIVE ON SELF-REPRESENTED LITIGANTS by Justice Kathleen O'Leary

The California court system is working to respond to the changing demographics of court users. A growing number of people come to court without lawyers. In many types of calendars ? assignments? where pro tems serve, few litigants will be represented:

- Traffic
- Small Claims
- Landlord/Tenant (statewide 34% of landlords are self-represented and approximately 90% of tenants are self-represented.)
- Family Law – 70 - 80% of cases statewide involve at least one unrepresented party

It is important from the outset to acknowledge that self-represented litigants generally are unfamiliar with court procedures and lack formal legal training and education. This poses special challenges for pro tem judges to ensure that all litigants are treated fairly and respectfully by the court and that their cases are decided on the basis of appropriate facts and the correct application of substantive law.

DO YOUR HOMEWORK

If you are planning to serve as a pro tem in an assignment where there will be large numbers of self-represented litigants, it is important that you be highly familiar with the laws and procedures relevant to the issues potentially arising before you. You will not be able to depend on counsel to educate you, either orally, or in writing, and you are likely to be the only one in the courtroom who knows the law. Find out what legal resources are available in the courtroom or chambers to research issues that may come up in the course of a hearing. Be aware that you may have to ask questions of litigants to get the information you need to make an appropriate decision. If you have little or no experience working with Self-Represented Litigants, it is advisable that you observe an experienced judicial officer handling calendar with a high density of Self-Represented Litigants. The Presiding Judge or Supervising Judge should be able to head you in the right direction.

SHORTLY BEFORE TAKING THE BENCH

Review the court files: many judges find it extremely helpful to review the files before taking the bench to:

a) identify potential issues that may arise in the case and areas where you may have legal or factual questions (Self-represented litigants will likely give you the facts in a narrative presentation without citing the legal issues raised by those facts. It is also common for self-represented litigants to fail to provide you with information that you may need to properly decide the case.)
b) take notes that you can refer to during the hearing (Making specific references to the pleadings assures the litigants that you have thoroughly reviewed their papers.)

c) determine whether cases are actually ready to be heard (i.e., proof of proper service) and flag those that are not (Handling the calendar efficiently shows respect for everyone's time.)

WHEN YOU PUT ON THE ROBE AND FIRST TAKE THE BENCH

Be aware that a self-represented litigant's reaction to the hearing you conduct will likely have a lasting effect on that person's opinion of the California justice system. Studies have revealed a genuine differences between attorneys and the public with respect to their concerns when evaluating an experience with the court. Attorneys care more about the outcome of a case while the public cares more about whether they were treated fairly and respectfully by the court. The non-attorneys are also more concerned with whether the court recognizes their rights and shows them respect.

Of course, this concern about the fairness of the process does not mean that people do not care about the outcomes of their cases. They most certainly do. Studies, however, consistently find that people are far more willing to accept the outcome of a case after a demonstrably fair hearing. If a party who receives an unfavorable outcome feels that the outcome was arrived at in a fair way, he or she is more likely to accept it and abide by it. Long-term studies show that a litigant's perception that the decision was the result of a fair process is far more likely to motivate a litigant to adhere to the judgment than fear or coercion.

You will set the tone of the courtroom based on how you begin. (First impressions really do count.) A few suggestions on how to set the correct tone at the outset are:

a) Welcome the litigants to the courtroom. Smile at them and extend a courtesy greeting.
b) Prior to calling the calendar explain in practical terms how the court works, what litigants should and shouldn't do, and what is going to happen and how it will happen. (Don't assume the bailiff or clerk has adequately made these advisements unless you personally heard what was said.)
c) Advise litigants that they will be allowed time to present their cases, but that it is your job to control the proceedings so that everyone has the opportunity to be heard. You should also let litigants know that in order to ensure that you receive all the information you may need to properly decide that cases you may be asking questions, directing witnesses to address specific subject matter, and occasionally you may need to limit or prohibit testimony that is irrelevant or otherwise inadmissible. By forewarning litigants of your need to control the proceedings they are less likely to be surprised or disturbed in the event you find it necessary to intervene.

The time you have to hear the cases will undoubtedly be limited so it is essential that you manage the calendar efficiently to allow all of the litigants an opportunity to be heard. Some tips on effective calendar management are:

a) Dispose of the cases that are not ready to be heard at the start of the calendar call. Doing this at the beginning of the calendar avoids litigants becoming frustrated at having spent unproductive time in the courtroom. If support staff is available in the courtroom or in the court's self help center, direct litigants to these individuals so that they may explain procedural requirements. If court staff is unavailable it is entirely appropriate for you to inform the litigant of the relevant rule or procedure that has prevented their hearing from going forward. (In this way the litigant can avoid making the same mistake again.)

b) Inquire if parties have come up with an agreement, take those cases first. But remember, it's unlikely that pro pers will be able to come up with agreements on their own without a mediator or other assistance. (They probably wouldn't be in court if they could work it out.)

Once you have accomplished the preliminaries, you will begin to hear the individual cases. Self-represented litigants will be paying close attention to your every word and action in an attempt to understand what is happening. Without a lawyer to explain the proceedings, a self-represented litigant has no way to determine what is routine and what is a common practice. Misinterpretations may occur if bench officers are not careful in giving explanations and do not make an effort to display the proper attitude and demeanor. Some suggestions on how to conduct a hearing that will instill trust and confidence in the judicial process are:

a) Address litigants by name when calling individual cases. When in doubt about the pronunciation of a litigant's name, ask the litigant to help you with the proper pronunciation.

b) Be mindful of your body language. Leaning forward in your chair suggests you are actively listening. Slouching or reclining could be interpreted as disinterest.

c) Maintain eye contact as a sign of respect. Lack of eye contact could be viewed as disrespectful. During the hearing it may be necessary for you to look at a file or read a note from your clerk. While it may be efficient to multi-task, resist the urge, because such behavior may suggest you are not listening or not paying proper attention.

d) Demonstrate that you are prepared. Refer to your notes and make a general comment about the circumstances of the particular case when you call the case. This helps let the litigants know that you've actually read the file and that the work they put into preparing the papers wasn't wasted. Offer a simple broad statement such as, "Mr. Brown, it is my understanding you are here today because you dispute you owe Ms. Smith $100 for the work she did at your home, is that correct?" (Sometimes such an inquiry will lead to a quick resolution of the case. Self-represented litigants sometimes don't dispute the indebtedness, but simply don't know how to arrange a payment schedule.) In a family law matter state the reason for the hearing, i.e., request to modify custody.
Avoid making a definitive and authoritative statement at the outset outlining the issues in the case. Such a statement may have a chilling effect on a litigant's presentation and if you have misunderstood, misstated, or simply missed an issue, the litigant may be too afraid or intimidated to correct you. Beginning with

a phrase such as I believe, I understand, I think, permits the litigant to politely correct you.

e) Allow a litigant to present his or her case. Studies suggest that people are much more willing to accept third-party decisions resolving their disputes if they feel they have had a chance to tell their stories. Because of our legal training we can be tempted to jump in and start examining the litigants rather than giving them a chance to tell us about their case. This doesn't mean you can't intervene when judicially appropriate, but remember it's not *your* case - it's the litigant's case.

f) Should you need to disallow a question because it is irrelevant or interrupt to ask a question, or intervene in any other way, you may want to start by mentioning that when you first took the bench you advised everyone this might happen. This should remind the litigant that the court has general rules it must follow and all litigants are subject to those rules. The perception of equal treatment is extremely important to self-represented litigants and it can dramatically affect their opinion as to the fairness of the proceeding and the entire court system.

g) Many times litigants think they need to keep repeating themselves to be sure you have heard what they have said. When litigants feel that they have been "heard" they are often willing to move on to other topics. If a litigant is becoming repetitive, you can normally move the testimony along by summarizing what you have already heard and asking if there is anything else the litigant wants to tell you.

In terms of influencing a self represented litigant's perception of the fairness of the proceeding, the way in which a decision is announced is many times as important as the decision itself. It is critical to be personable, but not personal, in rendering your decision. It may be appropriate to mention deficiencies in a litigant's evidence, but it is never appropriate to ridicule a litigant's case. A polite and composed oral statement of decision may lack the drama of those television court performances, but justice is your goal – not entertainment.

Self-represented litigants often have limited knowledge of the law and some information about the law that guided your decision is often helpful. Litigants are more accepting of an adverse decision if they are offered the reasoning behind it. Always attempt to demonstrate to the losing party that in making your decision you considered the evidence that was presented and then applied the legal rules.

There will undoubtedly be times when it is advisable to take the case under submission rather than announcing a decision in open court at the conclusion of the hearing. To arrive at your decision, you may need to consider the testimony of the litigants, review the law or the filings and need to take the matter under consideration. At other times, you may believe that it would be difficult to control the courtroom if you issued your decision from the bench. Rather than simply stating, "I'm taking the matter under submission," tell the litigants that you need some additional time to consider the

evidence or do some additional research on the law. Let them know they will be advised of your decision by mail and give them some idea of when they should expect to receive that notice.

Whether you announce your decision from the bench or take the case under submission, thank the litigants when you dismiss them. It is a minor courtesy, but it can make a major positive impression.

CALIFORNIA CODES
CIVIL CODE
SECTION 54.8

54.8. (a) In any civil or criminal proceeding, including, but not limited to, traffic, small claims court, family court proceedings and services, and juvenile court proceedings, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or in any administrative hearing of a public agency, where a party, witness, attorney, judicial employee, judge, juror, or other participant who is hearing impaired, the individual who is hearing impaired, upon his or her request, shall be provided with a functioning assistive listening system or a computer-aided transcription system. Any individual requiring this equipment shall give advance notice of his or her need to the appropriate court or agency at the time the hearing is set or not later than five days before the hearing.

(b) Assistive listening systems include, but are not limited to, special devices which transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission. Personal receivers, headphones, and neck loops shall be available upon request by individuals who are hearing impaired.

(c) If a computer-aided transcription system is requested, sufficient display terminals shall be provided to allow the individual who is hearing impaired to read the real-time transcript of the proceeding without difficulty.

(d) A sign shall be posted in a prominent place indicating the availability of, and how to request, an assistive listening system and a computer-aided transcription system. Notice of the availability of the systems shall be posted with notice of trials.

(e) Each superior court shall have at least one portable assistive listening system for use in any court facility within the county. When not in use, the system shall be stored in a location determined by the court.

(f) The Judicial Council shall develop and approve official forms for notice of the availability of assistive listening systems and computer-aided transcription systems for individuals who are hearing impaired. The Judicial Council shall also develop and maintain a system to record utilization by the courts of these assistive listening systems and computer-aided transcription systems.

(g) If the individual who is hearing impaired is a juror, the jury deliberation room shall be equipped with an assistive listening system or a computer-aided transcription system upon the request of the juror.

(h) A court reporter may be present in the jury deliberating room during a jury deliberation if the services of a court reporter for the purpose of operating a computer-aided transcription system are required for a juror who is hearing impaired.

(i) In any of the proceedings referred to in subdivision (a), or in any administrative hearing of a public agency, in which the individual who is hearing impaired is a party, witness, attorney, judicial employee, judge, juror, or other participant, and has requested use of an assistive listening system or computer-aided transcription system, the proceedings shall not commence until the system is in place and functioning.

(j) As used in this section, "individual who is hearing impaired" means an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding.

(k) In no case shall this section be construed to prescribe a lesser standard of accessibility or usability than that provided by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant to that act. Leg.H. 1980 ch. 1002, 1992 ch. 913, 1993 ch. 1214, 2001 ch. 824.

2006 California Rules of Court

Rule 989.3. Requests for accommodations by persons with disabilities

(a) [Policy] It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system. To ensure access to the courts for persons with disabilities, each superior and appellate court must designate at least one person to be the ADA coordinator, also known as the access coordinator, or designee to address requests for accommodations. This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

(Subd (a) amended effective January 1, 2006.)

(b) [Definitions] The following definitions apply under this rule:

(1) "Persons with disabilities" means individuals covered by California Civil Code section 51 et seq., the Americans with Disabilities Act of 1990 (42 U.S.C. A7 12101 et seq.), or other applicable state and federal law. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment.

(2) "Applicant" means any lawyer, party, witness, juror, or other person with an interest in attending any proceeding before any court of this state.

(3) "Accommodations" means actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.

(4) "Rule" means this rule regarding requests for accommodations in any state court by persons with disabilities.

(Subd (b) amended effective January 1, 2006.)

(c) [Process] The following process for requesting accommodations is established:

(1) Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in subdivision (c)(3).

(2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.

(3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than five court days before the requested implementation date. The court may, in its discretion, waive this requirement.

(4) The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.

(Subd (c) amended effective January 1, 2006.)

(d) [Permitted communication] Communications under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.

(Subd (d) amended effective January 1, 2006.)

(e) [Response to accommodation request] A court must respond to a request for accommodation as follows:

(1) The court must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990, and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation.

(2) The court must inform the applicant in writing as may be appropriate, and if applicable, in an alternative format, of the following: (a) that the request for accommodation~~s~~ is granted or denied, in whole or in part; and if the request for accommodation is denied, the reason therefor; or that an alternative accommodation is granted; (b) the nature of the accommodation to be provided, if any; and (c) the duration of the accommodation to be provided.

(Subd (e) amended effective January 1, 2006.)

(f) [Denial of accommodation request] A request for an accommodation may be denied only when the court determines that:

(1) The applicant has failed to satisfy the requirements of this rule; or

(2) The requested accommodation would create an undue financial or administrative burden on the court; or

(3) The requested accommodation would fundamentally alter the nature of a service, program, or activity.

(Subd (f) amended effective January 1, 2006.)

(g) [Review procedure]

(1) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by nonjudicial court personnel within 10 days of the date of the response by submitting, in writing, a request for review to the presiding judge or designated judicial officer.

(2) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by a presiding judge or another judicial officer within 10 days of the date of the notice of determination by filing a petition for extraordinary relief in a court of superior jurisdiction.

(Subd (g) amended effective January 1, 2006.)

(h) [Duration of accommodation] The accommodations by the court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

(Subd (h) amended effective January 1, 2006.)

Rule 989.3 amended effective January 1, 2006; adopted effective January 1, 1996

Drafter's Notes

1996—The council adopted this new rule to help implement the Americans with Disabilities Act, which requires public entities, including the courts, to make reasonable modifications in policies, practices, or procedures to avoid discrimination against persons with disabilities. Public entities are also required to ensure that equally effective communication exists between the entity and persons with disabilities as between the entity and persons without disabilities. The public entity, however, is not required to make any modifications nor take any action that would fundamentally alter the service, activity, or program, or result in undue financial and administrative burdens.

APPLICANT'S INFORMATION TO BE KEPT CONFIDENTIAL

MC-410

APPLICANT *(name):* APPLICANT is ☐ Witness ☐ Juror ☐ Attorney ☐ Party ☐ Other *(Specify)* Person submitting request *(name):* APPLICANT'S ADDRESS: TELEPHONE NO.:	*FOR COURT USE ONLY*
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
JUDGE:	
CASE TITLE	DEPARTMENT:
REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND RESPONSE	CASE NUMBER:

Applicant requests accommodation under rule 989.3 of the California Rules of Court, as follows:

1. Type of proceeding: ☐ Criminal ☐ Civil
2. Proceedings to be covered(for example, bail hearing, preliminary hearing, trial, sentencing hearing, family, probate, juvenile):
3. Date or dates needed *(specify):*
4. Impairment necessitating accommodation *(specify):*
5. Type or types of accommodation requested *(specify):*
6. Special requests or anticipated problems *(specify):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

(TYPE OR PRINT NAME) (SIGNATURE)

RESPONSE

The accommodation request is **GRANTED** and the court will provide the

☐ requested accommodation, in whole
☐ requested accommodation, in part *(specify below):*
☐ alternative accommodation *(specify below):*

For the following duration:

☐ For the above matter or appearance
☐ From *(dates):* to
☐ Indefinite period

The accommodation request is **DENIED** because it

☐ fails to satisfy the requirements of rule 989.3
☐ creates an undue burden on the court
☐ fundamentally alters the nature of the service, program, or activity

For the following reason *(attach additional pages, if necessary):* [See Cal. Rules of Court, rule 989.3(g), for the review procedure.]

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

☐ SIGNATURE FOLLOWS THE LAST PAGE OF THE RESPONSE.

Form Approved for Optional Use
Judicial Council of California
MC-410 [Rev. January 1, 2006]

REQUEST FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES AND RESPONSE

Cal. Rules of Court, rule 989.3
www.courtinfo.ca.gov
American LegalNet, Inc.
www.USCourtForms.com

TEN TIPS FOR COMMUNICATING WITH PEOPLE WITH DISABILITIES*

1. Speak directly rather than through a companion or the sign language interpreter who may be present.

2. Offer to shake hands when introduced. People with limited hand use or artificial limb can usually shake hands and offering the left hand is an acceptable greeting.

3. Always identify yourself and others who may be with you when meeting someone with a visual disability. When conversing in a group, remember to identify the person to whom you are speaking.

   When dining with a friend with a visual disability, ask if you can describe what is on his or her plate using the clock to describe the location of the food, i.e., potato is at 3 o'clock.

4. If you offer assistance, wait until the offer is accepted. Then listen or ask for instructions.

5. Treat adults as adults. Address people with disabilities by their first names only when extending that same familiarity to all others. Never patronize people of short stature or people in wheelchairs by patting them on the head or shoulder.

6. Do not lean against or hang on someone's wheelchair or scooter. Bear in mind that people with disabilities treat their wheelchairs or scooters as extensions of their bodies.

   The same goes for people with service animals. Never distract a work animal from their job without the owner's permission.

7. Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, or a nod of the head. Never pretend to understand; instead repeat what you have understood and allow the person to respond.

8. Place yourself at eye level when speaking with someone who is of short stature or who is in a wheelchair or on crutches.

9. Tap a person who has a hearing disability on the shoulder or wave your hand to get at his or her attention. Look directly at the person and speak clearly, slowly, and expressively to establish if the person can read your lips. If so, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking.

   If a person is wearing a hearing aid, don't assume that they have the ability to discriminate your speaking voice. Do not raise your voice. Speak slowly and clearly in a normal tone of voice.

10. Relax. Don't be embarrassed if you happen to use common expressions such as "See you later" or "Did you hear about this?" that seem to relate to a person's disability.

The United Cerebral Palsy Association, Inc. (UCPA) adopted the ten tips from many sources as a public service. The UCPA's version of the ten tips has been updated by Linda P. McCulloh of the Education Division/CJER of the Administrative Office of the Courts.

DISABILITY ACCESS SYMBOLS

These symbols are often used to show that accessibility is available for people with disabilities.


Braille


AD


AUDIO DESCRIPTION

DISABILITY ACCESS SYMBOLS

These symbols are often used to show that accessibility is available for people with disabilities.

International Symbol of Accessibility -- This symbol should only be used to indicate access for individuals with limited mobility, including wheelchair users. For example, the symbol is used to indicate an accessible entrance, bathroom or that a phone is lowered for wheelchair users.

Sign Language Interpreted -- The symbol indicates that Sign Language Interpretation is provided for a public meeting, lecture, tour, performance, conference or other program.

Telephone Typewriter (TTY) -- This symbol indicates that TTY is available. A TTY is a telephone device used with the telephone (and the phone number) for communication between deaf, hard of hearing, speech-disabled and/or hearing persons. In the past TTY has also been called text telephone (TT), or telecommunications device for the deaf (TDD).

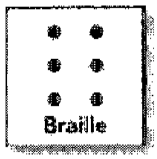
Closed Captioned -- This symbol indicates that a television program or videotape is closed captioned for deaf or hard of hearing persons (and others). TV sets that have a built-in or a separate decoder are equipped to display dialogue for programs that are captioned. The Television Decoder Circuitry Act of 1990 requires new TV sets (with screens 13" or larger) to have built-in decoders after July, 1993. Also, videos that are part of exhibitions may be closed captioned using the symbol with instructions to press a button for captioning. The alternative would be open captioning, which translates dialogue and other sounds in print.

Large Print -- This symbol for large print is printed in 18 point or larger text. In addition to indicating that large print versions of books, pamphlets, museum guides and theater programs are available, you may use the symbol on conference or membership forms to indicate that print materials may be provided in large print. Sans serif or modified serif print with good contrast is highly recommended, and special attention should be paid to letter and word spacing. (The smallest type written text that is considered to be "large print" is 14 point type.)

DISABILITY ACCESS SYMBOLS

Assistive Listening Systems or Devices -- These systems transmit sound via hearing aids or headsets. They include infrared, loop and FM systems. Portable systems may be available from the same audiovisual equipment suppliers that service conferences and meetings.

Volume Control Telephone -- This symbol indicates the location of telephones that have handsets with amplified sound and/or adjustable volume controls.



Braille Symbol -- This symbol indicates that printed matter is available in Braille, including exhibition labeling, publications and signage.

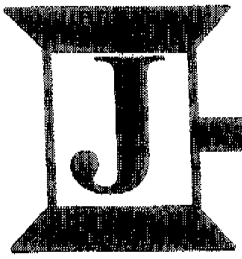
Access for Individuals Who are Blind or Have Low Vision (Other Than Print or Braille) -- This symbol may be used to indicate access for people who are blind or have low vision, including a guided tour; a path to a nature trail or a scent garden in a park; and a tactile tour or a museum exhibition that may be touched.

Audio Description for TV, Video and Film -- This service makes television, video, and film more accessible for persons who are blind or have low vision. Description of visual elements is provided by a trained Audio Describer through the Secondary Audio Program (SAP) of televisions and monitors equipped with stereo sound. An adapter for non-stereo TVs is available through the American Foundation for the Blind, 800-829-0500.

DISABILITY ACCESS SYMBOLS

Live Audio Description -- A service for people who are blind or have low vision that makes the performing and visual arts more accessible. A trained Audio Describer offers live commentary or narration (via headphones and a small transmitter) consisting of concise, objective descriptions of visual elements (for example, a theater performance or a visual arts exhibition at a museum).

Information -- This symbol may be used on signage or on a floor plan to indicate the location of the information or security desk, where there is more specific information or materials concerning access accommodations and services such as large print materials, tape recordings of materials, or sign interpreted tours.



20 Tips on Cross-Cultural Communication

Skill in cross-cultural communication is a big plus in today's world. The following suggestions are simple things you can do to bridge cultural differences. They are simple, but not necessarily easy, and they take practice.

We use the word "culture" here to mean group customs, beliefs, social patterns, and characteristics. Nationalities and ethnicities have cultures. So do businesses, occupations, generations, genders, and groups of people who have in common some distinguishing characteristic or experience.

Cultures are not always apparent from a person's appearance. For example, you may not be able to distinguish on sight between an immigrant and a third-generation American, a city-dweller and a small town-dweller, a deaf person and a hearing person.

Nationalities and ethnicities differ in ways including language, nonverbal communication, views on hierarchies (responsibilities, duties, and privileges of family or group members), interpersonal relationships, time, privacy, touching, and speech patterns. Groups other than nationalities and ethnicities may also have distinctive verbal and nonverbal perceptions and expressions, and shared values, standards, beliefs and understandings. Think, for instance, of how language and values usually differ depending on age and occupation.

The following tips are based on observations of successful cross-cultural communicators. Some of what they do is deliberate; some is instinctive. We have selected those behaviors that do not take a particular personality or talent. You can communicate well with a person of a different culture without giving up anything or pretending to be what you are not.

WHAT TO DO ALL OF THE TIME

1. **Remember that diversity has many levels and complexities, including cultures within cultures, and overlapping cultures.**

   For example: a 70-year-old female small business owner from Brazil is likely to have many cultural differences from a 26-year-old male fourth generation Los Angeles government employee of Mexican descent. Yet, only age and gender differences may be apparent to the casual observer.

2. Expect others to be thoughtful, intelligent people of goodwill, deserving of respect.

Don't be misled by cues such as accent, wordiness or quietness, posture, mannerisms, grammar, or dress. Unless you guard against it, your first reactions will be culturally biased. The more conscious you are of your own biases, the more open you can be to understanding.

For instance, does a person dress down because it is more comfortable? Or to fit in with less wealthy relatives? Or to indicate a willingness to pitch in and do some of the dirty work? Depending on the culture and the person, it could be any of these, or perhaps another reason. Assume that there are good reasons why people do things the way they do.

3. **Be willing to admit what you don't know.**
   People from other nations know a lot about American mainstream culture, at least as it is portrayed on TV and in movies. We know far less about them. Homosexuals know all about heterosexuals; few heterosexuals know much about homosexuals.

4. **Listen actively and carefully.**
   Careful listening usually means undivided attention. No picking lint off your jacket, no looking around to see who else has arrived at the meeting, no avoidable interruptions.

   Listen not only for factual information, but also for glimpses of the other person's sensibilities and reality. Closely watch reactions. You may find, for instance, that your new acquaintance is surprised and puzzled when people such as officials, managers, or professors joke with subordinates or strangers.

   Notice what the other person asks about. It usually indicates not only interest in the subject, but that the subject is not too personal or sensitive to discuss openly. For example, if a colleague asks if you refinanced your home when interest rates dropped, he or she probably is willing to talk about his or her home mortgage.

   Stop talking the instant it looks as if the other person has something to say. If you don't, you may never hear it. This, of course, does not apply if the other culture is an assertive one.

5. **Accept responsibility for any misunderstanding that may occur, rather than expecting the other person to bridge cultural differences.**
   This is easy to do by saying something like: "I'm sorry that I didn't make it clear..."or, "When you weren't eating lunch, I thought you were dieting. Now I realize that you're observing Ramadan."

6. **Notice and remember what people call themselves, e.g. African American or Black, Hispanic or Chicano, Iranian or Persian, Korean or Asian, and use those terms.**
   If, however, a group of immigrants uses the term "American to mean White native-born Americans, you could introduce them to a more inclusive definition of "American."

7. **Give non-judgmental feedback to be sure you heard what you thought you heard.**
   Use paraphrasing or questions for clarification.

8. **Remember that you are an insider to your culture, and an outsider to other cultures.** Be careful not to impose. Showing off your knowledge of someone else's culture, for example, might be considered intrusive.

9. **Look for aspects of the other culture that are admirable.** When you identify such a characteristic, you may want to somehow indicate your appreciation of it. For example, you might say, "I think it's great when young people value old things..."

WHAT TO DO MUCH OF THE TIME

10. **Expect to enjoy meeting people with experiences different from yours.** We put this tip in the "much of the time" section and not in the "all of the time' section, because, although getting to know other cultures is stimulating and gratifying, it can take energy. There are times when each of us seeks out familiar things and people.

11. **Be a bit on the formal side at first in language and in behavior.** After you get acquainted, you might choose to be more casual. Even then, remember to use what have been called the "magic words." "Please," "thank you," and "excuse me" are universally appreciated.

    Use formal terms of address unless and until the other person indicates a preference for the informal. This is especially important with people who have a history of being denied respect, including African Americans. Most of the world's cultures are more mindful of titles than we are. On the other hand, many people from other countries welcome informality as a sign of friendliness and equality.

12. **Be careful about how literally you take things, and how literally your statements might be taken.** "Let's have lunch soon" or "Make yourself at home" are two examples of easily misunderstood courtesy phrases. It is usually a good idea to hesitate a bit before accepting offers, of refreshments for instance. An immediate response may seem too eager.

13. **Accept silence as a part of conversation.** This is particularly difficult for enthusiastic extroverts. Silence can mean that the person you're talking to is not interested, or defers to you on the subject, or thinks that the subject is none of his or her business. Or silence can mean that she or he is thinking over what you said before answering.

14. **If it appears to be appreciated, act as a cultural guide/coach.** Explain what the local custom/practice is, e.g. "Some people dress up for the holiday luncheon, but most people wear ordinary work clothes."

15. **Look for guides/coaches to other cultures, someone who can help you put things in perspective.** "I've been invited to a bar mitzvah. I know that there will be a religious service followed by a big party, but I've never been to one. What should I do during the service? Should I sit at

the back and just observe? Or should I do what I see the other people doing/ What sort of gift is appropriate? Is it likely to go on into the evening?"

16. **Ask questions.**
Most people appreciate the interest in their cultures. Each person can speak of his/her experience, and some will speak in broader terms.

Ask yourself if there is a reason to think that this person would be knowledgeable about this subject. For example, is it reasonable to ask this woman what feminist activists think of some new item? Maybe. Maybe not. It all comes down to respecting people as individuals and not making assumptions.

Be careful about asking "why.' It frequently has a judgmental tone to it, implying that the thing you ask about is not acceptable. When you are asked questions, take care that your answers aren't too short. Make your answers smoother and gentler than a plain "yes' or "no," or other short answers. Most cultures are less matter-of-fact than that.

17. **To open a subject for discussion without putting the other person on the spot, think aloud about your experiences and your culture.**
"My mother was proud to say that she never ate meat with her fingers, but I always thought that was snobby. I enjoy eating some foods like fried chicken and barbecued ribs with my fingers." Thinking aloud is one way of interpreting your culture without talking down or assuming that the other person is ignorant. It also makes it safe for him or her to ask questions because you have been the first to reveal yourself.

What Successful Communicators Never Do

18. **Never make assumptions based on a person's appearance, name or group.**
Never expect people of a population group to all think alike or act alike.

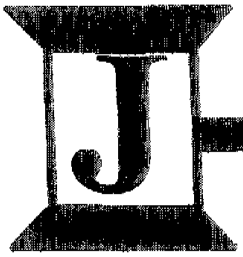
19. **Never show amusement or shock at something that is strange to you.**

20. **Never imply that the established way of doing something is the only way or the best way.**
We're not talking here about rules and regulations, but about lifestyles.

The tips given here are not unusual, certainly not original. But they work. They can be used with any cultural difference and with anyone, including friends and acquaintances, bosses, clients, customers, employees, coworkers, and neighbors.

If you already practice some of the tips, congratulations, you have a good start. When you practice all of the tips you'll understand all sorts of people better, and they will better understand you.

Modified from "23 Tips on Cross-Cultural Communication," Los Angeles County Commission on Human Relations



Bias Language

RACIAL BIAS

All persons share a common humanity. Racial divisions are often cited by one group of people to justify enslavement, separation or oppressive treatment of other human beings. It is pointless to avoid references to the differences among persons in colors of skin, eyes or hair, but these references should be made in the proper context and should not carry emotional or moral freight. In many cases, it is as appropriate to refer to light or tan or dark or black skin as to note blue, brown or green eyes, or blonde, brunette or red hair. But it is wrong to attach personal or moral quality to physical traits.

Here are some suggestions:

- Racial stereotyping must be avoided. Sensitive people will avoid the now clearly outmoded racial "types" which were once common. They are derogatory and false. But more subtle "types" are often present in modern usage; e.g., the suggestion that all people on welfare are black or Hispanic, that crime occurs only in certain communities, that suburbs are populated only by white people.

  Pejorative or joking references of a racial nature should be removed from all writing or speaking. Terms such as "Jap," "Chinaman," or "Asiatic" are offensive. Racial jokes or stories based upon presumed traits of nationalities are in poor taste.

- Avoid tokenism, particularly in pictures or illustrations. Characters should be drawn as individuals. They can be shown with the physical characteristics of their race, not simply as Caucasians with colored skin.

- Depict a variety of lifestyles. Avoid putting people only in settings which contrast with white, North American culture. Many Africans live in cities, and American suburbs are not solely populated with Anglo-Saxons. In writing, speaking and illustrating, care should be taken to avoid showing persons from other parts of the world as culturally underdeveloped.

- Avoid picturing non-white persons functioning in essentially subservient roles.

- Be careful with the point of view presented. Do not imply that minority persons are considered "the problem" in certain circumstances. Do not suggest that solutions to social problems depend upon the benevolence of those who are white or rich. Also avoid "civilized" and "uncivilized" or "primitive" in international references, since the terms pass judgment on cultures which may be thousands of years older than the writer's own.

- Be conscious of norms which can limit a person's aspirations and self-concepts. Think what it would do to a black or brown child to be bombarded with images of white as beautiful or clean or pure or virtuous and black or brown as dirty and menacing. It is equally unproductive to create guilt in the mind of the socially-concerned white middle-class youth by insisting that he or she is "one of the oppressors" or "the focus of evil."

- Be conscious of sources used in research, writing or speaking. Many publications considered authoritative in such fields as history or social studies have been written from a white, European or American male perspective and have not taken into consideration the interests or contributions that

other racial groups or women have made to history. The United States is a multi-cultural society and this should be reflected.

- Mention of the race or nationality of an individual should be made only when it is necessary or important to the sense of the material. When race or nationality must be cited, it should be done in a non-pejorative way. No one should be presented as "typical" of his or her ethnic group.

Ethnic Bias

In the United States there is a great deal of conscious and unconscious prejudice against what are perceived to be the characteristics of other nationalities. The principle that all people are created equal is accepted, but society cannot fully disguise its nationalistic bias. Language frequently fosters this bias.

Here are some suggestions on how to avoid national bias in writing or speaking:

- Apply the same test to nationality that one would apply to race. Avoid assuming things about any nationality. It is neither true nor memorable to say that "all Irish love a fight," or that the Mediterranean region produces only hot-blooded men and women. Avoid suggesting that all Arabs are rich, that all Jews are clannish, that Poles or Finns are dull-witted, that Japanese are sneaky. Every nationality should be shown with fully human attributes.

- Such expressions as "backward nations," or even "emerging nations" suggest a hierarchy of values which is inappropriate. The use of "third world" is widespread and accepted, but whenever possible to be specific in referring to such places, using the actual name of the nation involved or a more precise reference to the region, e.g. east African nations, Central America, Brazil, southeast Asia. When possible, say "Liberian" or "Tanzanian" rather than "African," since Africa includes the territory from South Africa's Cape of Good Hope to the Mediterranean.

- When seeking illustrations, remember that there are heroes and heroines from all national backgrounds. To limit references only to northern Europeans or white Americans is inaccurate and offensive.

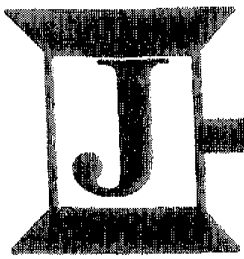
- Bias also exists in geographical stereotypes, such as the Southern racist, country bumpkin or Washington politician. Such code words and their implications should be avoided.

- The United States now has a sizable Spanish-speaking population, which reflects cultural diversity within itself. There are also significant numbers of people of Hispanic ancestry who are primarily English-speaking. It is wrong to portray anyone with a Hispanic surname as a Spanish-speaking person though, they may also be Cuban, Puerto Rican or from the countries of Central and South America. Avoid the assumption that Hispanic people wear sombreros, love siestas, or are second-class citizens because their language is accented.

- While persons from other nations may speak imperfect or accented English, avoid using such a device to subtly imply that they are uneducated or inferior.

- Be alert to changes in place names, political boundaries, and regions where the political destiny is as yet unclear. The West Bank of the Jordan River is presently under Israel's control, though disputed. South Africa still controls South-West Africa, though common usage now assigns the name Namibia to that region.

- "American Indian" is an acceptable term for referring to peoples resident on this continent when the Europeans arrived. "Native American" is also used, though that term is in disfavor with many Indian groups because the federal government now includes Samoans and Hawaiians in that category. Wherever possible writers and speakers should refer to specific tribes e.g. Navajo, Hopi, Sioux, Seminole. "Alaskan Natives" is an acceptable term for the tribes of that region. The term "squaw" is highly insulting to Indian women. They have babies, not "papooses." Do not cast Native Americans in the mold of the Indian as he or she appears in old western movies.



What About Accents?

Each of us has an accent, even if we were born and raised here. Even if we sound just like a television news anchor. In simplest terms, an accent is a way of pronouncing words. Do you know someone who says "umbrella" with the stress on the first syllable? That's a regional accent. Do you say "measure" to rhyme with "say sure" or with "says your?" Again, it's an accent.

These, of course, are minor and occasional variations. We have no trouble understanding the speaker. We may even find the differences attractive or charming.

With rapid population changes and new ethnic and cultural diversity, we encounter accents more frequently, and they often are heavier. Heavier accents are more difficult to understand.

WHAT AN ACCENT INDICATES

When a person speaks English with a foreign accent she/he is probably an immigrant. Not only that, but she/he probably learned English as an adult or young adult, or learned it from someone who speaks with an accent.

An accent does not indicate a person's intelligence, educational level, or social or economic status. In fact some people who speak with accents have extensive vocabularies that they can use with precision to convey complex concepts.

If an immigrant has an accent, it also does not mean that she/he is a recent arrival. Once an adult learns one pronunciation for a word, it takes tremendous effort to learn a different way of saying it. There are people with accents who have spoken English for a half a century or more.

Here we will deal with problems related to how words are spoken, not with the words used. The two are not easily separated, since immigrants with accents may still be thinking in their native tongue and then translating to English.

ACCENTS AND EMOTIONS

Emotion is connected to accents in two ways. A native English speaker may react emotionally to the sound of an accent. This could be a good feeling, remembering a fabulous tour of the Caribbean Islands or the dear Scottish woman who lived across the street when you were a kid.

More often, unfortunately, the emotion is annoyance at having to go around the accent to get to the message. If, for instance, you work in customer relations, you have to figure out what's being said before you can even begin answering questions and solving problems.

The emotions of immigrants are also connected to their accents. The more emotional the situation, the stronger the accent. This is true whether the emotion is positive or negative, whether the occasion is happy, exciting, sad, hostile, frightening, or anxious.

All of us know what it's like to try to speak effectively under pressure. If you have ever taken a public speaking class (or if you've avoided taking one) you know what panic can do. More common experiences are the job interviews, or talking to the loan specialist asking personal questions about finances. When we're flustered, the words don't seem to come out right. Later, when the pressure is off, we think of things we should have said and how we could have said things better.

Accent Prejudice

When you hear someone complain about an "impossible to understand" accent, watch to see for yourself how impossible it is. For example, a driver may say she can't understand a word that the parking lot attendant says, and yet she follows his directions to get from the visitors' parking structure to the elevator.

Or, the driver may want to believe that communication is impossible. If so, it surely is. Accents can present problems to well-meaning people. Prejudice presents a total block.

Accent Reduction

Easier said than done. Most immigrants would love to reduce or lose their accents. Some spend hundreds of hours and hundreds of dollars trying. Employers have been known to offer accent reduction classes for employees, sometimes after working hours. Private instruction is also available, for as much as $200 an hour or more.

You may have heard people apologizing for their accents. It is not easy to change the way we say things. What if you just learned that the woman you've been calling Alma is really Elma? Even that change takes effort. Particularly if you don't get much practice because you don't see her often.

Tips for Dealing with Accents

Be Patient

Working around an accent takes time. If you feel pressured, it will work against understanding. The accented speaker feels as much or more pressure than you do, and maybe embarrassment, too. People who deal well with accents typically are patient people. If you see that you're going to have a problem, take a breath and switch gears.

Be patient with yourself, too. Sometimes you will hear a statement from an accented speaker and think that you don't understand. Then, maybe ten seconds later, it will have traveled through your brain in some way that lets you understand. Relax and allow for such delayed reactions.

Use Feedback –

Even among native English speakers there are communication problems. They may need to use feedback to be sure that they understand one another. How often have you heard someone say, "If I understood you correctly...?"

Feedback works well with accents, too. The greater the potential for misunderstanding, the more important it is to clarify and confirm what was said. It can be done naturally in the flow of conversation.

Do Not Make an End Run

When there is a bystander available to interpret an accent, resist the temptation to turn to that person. If she or he offers help, by repeating a word, for instance, that's fine. But it is demeaning to treat people with accents as if they are incapable of speaking for themselves.

Using an interpreter after the fact is another matter. If you have a chance after a conversation to get clarification from an interpreter, do, by all means.

Understanding Accents

Learning to understand accented English may be like the "pre-production" or "pre-speech" stage of language acquisition. Before children speak, they understand what is said. We have all gone through that phase, and without apparent effort. We can use the same ability to learn to decipher accents.

Put the Person at Ease

Most of us do our best in warm, safe atmospheres. By contrast, when we are criticized or treated like an interloper, we are not as articulate as we could be. In fact, we may remain silent, rather than risk embarrassment. To a supervisor or employer, the silence can mean that you don't get the advantage of the employee's observations, questions, and ideas.

Listen for the Thought, Not the Words

A major problem with accents is that we tend to be distracted by how a person speaks, rather than what he or she is saying. Here is an example of bad typing:

> *Even if I strike wront keys, i'll bet that you can figyure out what i'm trying to say, even if I strike extra lkeys or the worng keys. Going back to motivation, you culld figure it out even nore quicly if you know that this parrgraph had the cluer to finding a teasure.*

Taken separately, you might not guess what "wrong" or "culld" were. But because you were reading whole sentences it was no problem.

You've probably also read photocopies where the print was off center and the last one or two letters at the end of each line were missing. Still, because you were reading in context, you got the meaning. You can use the same skill when listening to immigrants who tend to omit final consonants.

The most important words are most likely to be conveyed. They may be the only words essential to basic understanding, if you take non-verbal clues in as well. When the doctor takes off the

blood pressure cuff and says, "Your blood pressure is normal," you may not care that he also said, "You must be doing aerobics."

Show and Tell

Encourage nonverbal signals that will enforce the meaning of words. If someone were to say "I signed the loan application" pronouncing "application" with a heavy accent, you might be puzzled. But if she is pointing to a document you've been discussing, you quickly guess the meaning.

Show and tell has its limits, though. Beware that body language differs among cultures.

To Lip-Read or Not to Lip-Read

Lip-reading is another activity that has cultural implications, since eye-contact means different things in different cultures. Some people find it helpful to watch a speaker's lips. Others find it distracting. Try it and judge for yourself.

Talk Around Problem Words

We've mentioned feedback for clarification and confirmation. If you are missing the key words, use feedback in a different way. Repeat the information that you did catch and ask help with the missing information. For example: "When you go to your sister's home, she'll give you something to fix your car?"

Sometimes you will venture a guess, but they can be educated guesses, based on context. Just be sure that you are not hearing what you expect to hear, rather than what was said. Use the logic of the sentence and situation.

Be the Second One to Laugh

Laughter about communication problems may be fun, or it may be hurtful. If the newcomer finds your efforts and his/hers rather amusing, he/she may laugh. That's most likely to happen if you have become friends. By all means, laugh along with him/her. But if you find it amusing, and he/she finds it trying, laughter would not be appreciated.

Start With Easy Stuff

It is also helpful to listen to people with a slight version of the accent that you want to decode. Listen not just for what they have to say, but for the sound of the accent. It will take you closer to understanding more strongly accented speech.

But be sure that it is the same language. Do not listen to a Korean and expect to get better at understanding a Cantonese Chinese accent. For that matter, do not listen to a Mandarin Chinese accent and expect to gain better understanding of a Cantonese Chinese accent.

Ideas for the Highly Motivated

If you are highly motivated to understand accents, listen to the music of English spoken with an accent. Notice the rhythm, where the stress goes in a word, what sounds are substituted for other sounds, the pace, the cadence.

Drill yourself on an accented word that gave you trouble. Say it over and over as a key to other words using the same sounds. It will train your ear. A simplified example would be to take Mr. Yonson's (Johnson's) switch of "y" for "j" and see how other words might be pronounced: jet, jacket, jury, juice.

Comics can impersonate celebrities by mimicking their speech patterns. Sometimes it is cutting humor, sometimes loving. A few comedians can make you think they are quoting Shakespeare, when they have just thrown together tones and cadences. You can do something similar, for positive reasons, and **with only yourself for an audience.**

Some people believe that because music lovers are practiced listeners, they have an advantage when it comes to learning languages or understanding accents. They catch small differences. After you learn to understand one accent, other accents come easier.

The Magic Key to Accents

In real estate, they say, the three most important things are: location, location, location. In dealing with accents, it is motivation, motivation, motivation. Nothing is more important.

PRO TEM EDUCATION

1

Fairness Course Objectives

1. Validate fairness as a judicial skill.
2. Identify common biases and stereotypes and the effect they can have on judicial conduct and decision-making.
3. Identify ways to self-monitor for fairness.
4. Learn communication skills that enhance the public perception of fairness.

2

Resisting Fairness Course

- "I am fair or I wouldn't be here."
- "The faculty thinks they know more about fairness than I do," or "They're going to tell me how to be 'politically correct.' "
- "People who think the courts aren't fair are probably the ones who lose their cases."

3

Ground Rules

- There are no “right” or “wrong” answers.
- No “put downs” for ideas or choice of words.
- Regarding gender bias, men will not be blamed.
- We ask for:
  - openness
  - introspection
  - disagreement
  - privacy

4

Canons of Judicial Ethics Referring to Fairness

- First Sentence of Preamble to Canons
- Canon 2A & 2C
- Canon 3B(5), (6), & (8)
- Canon 3C(1), (2), & (4)
- Canon 3E
- Canon 5B

5

Canon 2(A)

Impartiality and integrity of the judiciary

Respect and comply with the laws to promote public confidence

6

Canon 3(B)(4)

Conduct of patience, dignity and courtesy required of lawyers, court staff and court

7

Canon 3(B)(5)

Performing judicial duties without bias or prejudice

8

Canon 3(B)(6)

Judge shall require lawyers to refrain from manifesting by words or conduct, bias or prejudice

9

Canon 3(C)

Inappropriate use of humor

10

Definition of Bias

- Bias refers to beliefs, feelings, attitudes, and behaviors (speech or action) that reflect:
- Stereotypes about the "true nature" and proper role of a person;
- Cultural assumptions about the relative worth of a person;
- Myths and misconceptions about the social and economic realities of a person;
- The imposition of burdens on one person that are not imposed on another because that person is perceived to be a member of a category or group.

11

Complaints About Courts

1. The courts take too long.
2. Financial status, if not the major factor, is a major factor in determining case outcome.
3. People don't like lawyers and don't want to use them.

12

Ground Rules

- There are no “right” or “wrong” answers.
- No “put downs” for ideas or choice of words.
- Regarding gender bias, men will not be blamed.
- We ask for:
  - openness
  - introspection
  - disagreement
  - privacy

13

Task

- During the next 10 seconds, fill in the blank space presented (mentally, not aloud) with stereotypes that exist “out there in the world” with one of the groups
- May be positive or negative
- The group is divided into men and women
- Awareness of a stereotype DOES NOT mean that you believe it

14

Racial/Ethnic/Religious Group: _____

Men	Women
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

15

Active Listening Techniques

- Listen
- Interact
- Repeat
- Clarify
- Say what you mean
- Review & process
- Slow down
- Calming techniques

16

Canon 3B(4)

A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all court staff and personnel under the judge's direction and control.

17

Examples of What Not to Do

- Use of language is extremely important
- Avoid berating the litigants
- Avoid even marginal swear words
- Tone of voice is important as the words used

18

Treatment of Court Staff

- The roles of clerk and temporary judge
- The roles of bailiff and temporary judge

19

Demeanor Issues

Don't catch the dreaded disease of 'robeitis'

Symptoms:

- Interrupting
- Legalese: language needs to be plain language
- Don't argue with the litigants

20

Demeanor & Impartiality

These go hand in hand...

- Don't make faces
- Don't bully
- Don't rush
- Don't sigh
- Don't sleep

21

Courtroom Control: Techniques

Suggestions:

- Controlling your own emotions
- Use of neutral language
- Use of case management

22